

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

**RANDALL MOORE
NATIONAL CONTRACTOR SERVICES
COMPANY, INC.
E.T.I., INC., and
E.T.I. REALTY, INC.,**

Respondents.

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**DOCKET NO.: 08-3541-DB
08-3542-DB
08-3543-DB
08-3544-DB**

DEBARRING OFFICIAL'S DETERMINATION

INTRODUCTION

By separate Notices of Proposed Debarment and Continuation of Existing Suspension dated May 16, 2008 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondents RANDALL MOORE, NATIONAL CONTRACTOR SERVICES COMPANY, INC., E.T.I., INC., and E.T.I. REALTY, INC. that HUD was proposing their debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government from the date of their suspension to January 31, 2009¹. The Notice further advised Respondents that the proposal to debar them and their continuing suspension were in accordance with the procedures set forth in 2 CFR part 180 and 2424.² In addition, the Notice informed Respondent Moore that his proposed debarment was based upon his conviction in the United States District Court for

¹ Respondents Moore and National Contractor Services Company, Inc. were notified of their immediate suspension effective January 31, 2006. E.T.I., Inc. and E.T.I. Realty, Inc. were notified that their suspension would take immediate effect from July 31, 2006. The Respondents' appeal of their exclusion was originally docketed under Docket Nos. 08-3521-DB-R through 08-3524-DB-R. When the debarment notices were issued later, new docket numbers were assigned. In his September 17, 2008, Order, the Debarring Official's Designee issued a correction, in effect cancelling the original docket numbers and replacing them with the docket numbers as they now read - 08-3541-DB through 08-3544-DB.

² The individual Notices of Suspension informed the Respondents that their suspension was in accordance with the procedures set forth at 24 CFR part 24. However, HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2 CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. Accordingly, all references to the debarment regulations will be to the regulations at 2 CFR part 180.

the Eastern District of Louisiana, for violating 18 USC 4 (Misprision of a Felony). The other Respondents were advised that their proposed debarment and continuing suspension were based upon information that they were affiliates of Moore.³ For Respondent Moore's conviction on the one count in the Information to which he pleaded guilty, Respondent was sentenced to probation for three years and ordered to pay a fine of \$3,000.00.

A telephonic hearing on Respondents' proposed debarment⁴ was held in Washington, D.C. on September 24, 2008, before the Debarring Official's Designee, Mortimer F. Coward. Respondent was represented by Kenneth Joel Haber, Esq. and Douglas G. Wadler, Esq. and, along with his counsel, participated by phone at the hearing. Lisa Saunders, Esq. appeared on behalf of HUD. The record was left open for the parties' filing of supplemental submissions and closed on October 2, 2008.

Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondents from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, until November 30, 2008. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The separate Notices of Suspension dated January 31, 2006, to Respondents Moore and National Contractor Services Company, Inc., and similar Notices to E.T.I. Realty, Inc. and E.T.I. Inc., dated July 31, 2006.
- (2) The individual Notices of Proposed Debarment and Continuation of Existing Suspension issued to each Respondent by HUD dated May 16, 2008.
- (3) A request to terminate Respondents' suspension filed by Respondents' attorney by letter dated April 18, 2008.
- (4) Respondents' Request for Hearing on the Proposed Debarment and Continuation of Existing Suspension and Request for Consolidation filed June 13, 2008.⁵
- (5) Respondents' Pre-Hearing Submission filed September 8, 2008 (including all exhibits thereto).
- (6) Respondents' Supplemental Submission filed September 26, 2008 (including all exhibits thereto).
- (7) A Bill of Information filed August 2, 2005, charging Respondent Moore with Misprision of a Felony.
- (8) The Judgment in a Criminal Case entered June 7, 2007, finding Respondent Moore guilty of one count of misprision of a felony.

³ In pertinent part, 2 CFR 180.905 provides that "persons are *affiliates* of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both."

⁴ Although this Determination applies to all four Respondents, references to events that underlie this debarment action will be limited to Respondent Moore, who, for all practical purposes, was the only wrongdoer in this matter.

⁵ By Order dated September 17, 2008, the four cases were consolidated as one action for hearing.

- (9) The Department's Pre-Hearing Brief in Support of a Three-Year Debarment of the Respondent filed August 29, 2008 (including all exhibits thereto).

Government Counsel's Arguments

Government counsel recites as background the allegations in the Information and the facts in the Factual Basis that Respondent signed in acknowledging his guilt. In summary, the facts are that Respondent Moore owned National Contractor Services Company, Inc. (NCS), which was a subcontractor of Johnson Controls, Inc. Johnson Controls was contracted by the City of New Orleans to work on city-funded projects. The City's Director of Property Management, Kerry De Cay, solicited a 2002 Super Bowl ticket from Respondent Moore, which Respondent gave to De Cay. At the time De Cay received the ticket, NCS was working on a city contract. Under a later contract that Johnson Controls signed with the City to repair its traffic lights, NCS was hired by Johnson Controls as a subcontractor. NCS and Johnson Controls signed the contract on April 22, 2002, in the amount of \$2,312,240.00. Included in the contract was a line item "mobilization" fee for \$300,000.00. In truth, this fee was used to pay kickbacks to De Cay and Terry Songy, Johnson Controls' project manager. Prior to the signing of the contract, De Cay and Songy had solicited these payments from Respondent, and Respondent had agreed to make them.⁶ Respondent was interviewed in March 2004 by FBI agents and Assistant U.S. Attorneys regarding the contract and, at that time, did not provide information about the kickbacks paid to Songy and De Cay. After the investigation uncovered evidence of the kickbacks, Respondent agreed to cooperate with the investigators. Respondent later admitted providing the Super Bowl ticket to De Cay and making the cash payments to De Cay and Songy. Respondent also disclosed that during the meeting with Johnson Controls officials, he was told that a \$300,000.00 contingency fund was built into the contract. This fund later was designated the "mobilization fee."

Government counsel argues that Respondent is subject to the suspension and debarment regulations based on a contract that NCS entered into with the Housing Authority of New Orleans (HANO), which was executed by Respondent as CEO of NCS. HANO at all relevant times was partly funded by HUD. Thus, Respondent has been, and may reasonably be expected to be, a participant or principal in covered transactions. *See* 2 CFR 180.150 and 24 CFR 2424.995. Counsel further argues that Respondent's suspension was necessary to protect the public interest, based on the seriousness of the crime for which he was convicted. *See* 2 CFR 180.700. Respondent's conviction provides adequate evidence for purposes of his suspension and, as such, counsel continues, the Government has met its burden of proof. *See* 2 CFR 180.705(b). Counsel also argues that Respondent's conviction provides both the cause and the requisite proof for his debarment. *See* 2 CFR 180.800(a)(1), and 180.850(a) and (b). Counsel further argues that Respondent's criminal acts indicate a lack of business integrity and honesty

⁶ According to the Government's Motion and Incorporated Memorandum for a Sentencing Reduction Pursuant to 5K1.1 of the United States Sentencing Guidelines filed in Respondent Moore's criminal case, "Moore provided . . . specific details of how he was extorted to pay Songy and De Cay kickbacks." *See* Respondent's Pre-Hearing Submission, Ex. 3.

that seriously affects his present responsibility and is cause for his debarment under 2 CFR 180.800(a)(4).

Government counsel also argues that Respondent's debarment is necessary to protect the public interest. 2 CFR 180.125. The Government, counsel adds, must be able to depend upon its participants' honesty, integrity, and responsibility in its business dealings to ensure that government funds are properly spent. Respondent's wrongdoing, counsel contends, indicates a lack of honesty and integrity and his continued participation in federal programs would place government funds at risk.

In arguing for a three-year debarment of Respondent, counsel states that Respondent made illegal payments over a period of months and willfully concealed the crime over a period of three years. Counsel also rejects Respondent's claim that he substantially cooperated with the investigators, pointing out that Respondent only cooperated after evidence of the scheme was presented to him. Counsel argues that Respondent "should not now be able to claim his cooperation is mitigative after investigators spent time and resources to uncover the felony that was [Respondent's] responsibility to report." Counsel also argues that the letters of support submitted on Respondent's behalf are "unpersuasive and not mitigating because they do not discuss [Respondent's] present business conduct." Counsel also argues that, pursuant to 2 CFR 180.905, Respondent's companies are his affiliates and are subject to the same period of debarment as Respondent. *See* 2 CFR 180.625(b). Counsel concludes that Respondent's suspension was warranted and that a three-year debarment is appropriate.

Respondents' Arguments

Respondents argue that their continued suspension and debarment should be terminated immediately pursuant to 2 CFR 180.875, which allows the "debarring official to reconsider the debarment decision or to reduce the time period or scope of debarment." Continuation of their suspension/debarment⁷ Respondents argue, would be "against the best interests of the nation and of the City of New Orleans"⁸ as it seeks to recover from its recent devastation. Respondent Moore argues that "[h]e was the victim of extortion and not the corruptor of public officials."⁹ Respondent argues that, as acknowledged by the Government in its sentencing motion in his criminal trial, he provided substantial cooperation that led to the conviction of others involved in the kickback scheme. Further, Respondent "has demonstrated true remorse for his past actions, and he has worked tirelessly to repair his reputation as a businessman and community leader."¹⁰

⁷ In their April 18, 2008, submission, Respondents raised the issue of their suspension, at that time, being then in place for from twenty to twenty-six months. Respondents called attention to the provision in 2 CFR 180.760(a) that limits a suspension to 12 months "if [legal or debarment] proceedings are not initiated" and to 180.760(b), which provides that "[I]n no event may a suspension exceed 18 months without initiating proceedings under paragraph (a)." In response to a question on this issue from the Debarring Official's Designee, Respondent's counsel responded that "HUD has not done anything improper."

⁸ *See* Respondent's Pre-Hearing Submission at 5.

⁹ *See* Ex. 2 of Respondent's Pre-Hearing Submission. *See also*, Ex. 3, Government's Motion and Incorporated Memorandum for a Sentencing Reduction.

¹⁰ *See* Respondent's Pre-Hearing Submission at 5.

Respondent testified that he did make a serious mistake in paying kickbacks, and that he had never done anything like that before. Respondent explained his succumbing to De Cay's and Songy's entreaties to pay them kickbacks by stating that "construction is subjective" and that the person to approve work done on a construction project can put the construction bond covering the project at risk. Respondent argues that he and his companies "no longer pose any threat to HUD programs or to the public interest."¹¹ Respondent concludes that he is presently responsible and submits for the Debarring Official's consideration, the six letters of commendation provided by his business associates.

Based on the foregoing, Respondents request that their suspension/debarment be terminated as early as possible.

Findings of Fact

1. Respondent Moore was a subcontractor on City of New Orleans projects who, through one of his companies, NCS, also performed repair work for HANO, a housing authority partly funded by HUD.
2. In April 2002, Johnson Controls, a general contractor, and NCS signed a contract for the repair of the City of New Orleans traffic lights.
3. The contract included an item designated as a contingency fund for \$300,000.00, later redesignated a "mobilization" fee.
4. A city employee (De Cay) and the contractor's representative (Songy) approached Respondent Moore about paying kickbacks to them from the "mobilization" fee.
5. Respondent Moore, though reluctant initially to pay kickbacks, agreed subsequently to make, and did make, the illicit payments.
6. Respondent Moore was concerned that De Cay and Songy, if he resisted their extortionate demands, could affect his ability to perform timely under the contract through their administrative power over the project.
7. In March 2004, Respondent Moore was interviewed by FBI agents and attorneys of the United States Attorney's Office with respect to his knowledge of improper practices affecting the contract, but failed to disclose the kickbacks he had paid.
8. Subsequently, after the investigation uncovered evidence of the illicit payments, Respondent agreed to cooperate with the investigation.
9. Respondent's substantial cooperation with investigators led to the conviction of other malefactors involved in the kickback scheme.
10. Respondent pleaded guilty and was convicted of misprision of a felony and sentenced to three years' probation and ordered to pay a fine of \$3,000.00.

¹¹ Respondent's Supplemental Submission at 2.

Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 2 CFR part 180.
2. Respondent's criminal conviction serves as the basis for his debarment.
3. Pursuant to 2 CFR 180.800, a conviction of a criminal offense in connection with obtaining, or attempting to obtain, or performing a public or private agreement or transaction, such as a contract to perform work for a municipality, is a cause for debarment.
4. Respondent was the victim of an extortion scheme who, though initially hesitant to become involved, did pay kickbacks to the extortionists.
5. The passage of time since Respondent's commission of the crime for which he was convicted and the absence of evidence of any further wrongdoing by Respondent or his affiliates are mitigating factors that were considered favorably in determining Respondents' debarment. *See* 2 CFR 180.860.
6. The commendatory letters received from Respondent Moore's business associates and colleagues support his claim that he is presently responsible. *See* 2 CFR 180.125(a) and 180.855.
7. Respondent's acceptance of responsibility and expression of remorse and regret for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed. *See* 2 CFR 180.860(g).
8. The seriousness of Respondent Moore's act was an aggravating factor considered in imposing the period of debarment on him and his correspondents. *See* 2 CFR 180.865.
9. The prevailing business conditions in New Orleans at the time of Respondent's wrongful conduct and Respondent's initial resistance to acquiescing in an extortionate scheme devised by others was a mitigating factor considered in determining Respondents' debarment. *See* 2 CFR 180.860.
10. Respondent Moore's correspondents are affiliates of his pursuant to 2 CFR 180.905 and are subject to the same period of debarment imposed on him. *See* 2 CFR 180.625.
11. The period of suspension Respondents have already served was considered in determining the appropriate period of debarment. *See* 2 CFR 180.865(b).
12. The Government has met its burden of demonstrating that cause exists for Respondents' debarment. *See* 2 CFR 180.850 and 855.
13. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
14. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondents Moore, National Contractor Services Company, Inc., E.T.I., Inc., and E.T.I. Realty, Inc. until November 30, 2008. Respondents' "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 17 Nov. '08



Henry S. Czauski
Debarring Official